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City and City-County Planning Boards Enabling Legislation

(Sections 11-3801 through 11-3858, R.C.M., 1947)

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

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11-3801. City planning boards or city-county planning boards authorized—purpose of act. The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their

citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials, and in addition, that certain regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers be granted legislative bodies of cities and counties to carry out the purposes of this act.

History: En. Sec. 1, Ch. 246, L. 1957.

Title of Act

An act relating to the creation of a city planning board or a city-county planning board; defining the terms; relating to the enactment of city ordinances granting powers to a city planning board or a city-county planning board, and defining the powers thereof; relating to the members of the city planning board or city-county planning board and defining the powers and duties of such members; providing for the adoption by the governing bodies of cities and counties of a master plan for the development of the area within the city or county covered by the master plan of development; providing that the governing bodies of cities and counties may levy a tax not to exceed one-half mill on the property therein for planning board purposes; providing for the increase and decrease in the area covered by a master plan of development; conferring on the planning board the authority to approve or disapprove plats and maps of all sub-divisions in the area covered by the master plan; providing for transferring to the planning board authority relating to zoning and building regulation conferred on cities by sections 11-2701 to 11-2709, Revised Codes of Montana, 1947; providing that nothing in the act shall prevent the complete use, development, recovery, and sale of mineral and forest resources within the area covered by a master plan; providing for appeals from decisions of a planning board; containing a severability clause; and repealing all acts inconsistent herewith.

11-3802. Existence and actions of existing boards. Upon the taking effect of this act, a planning board heretofore established shall continue to operate as though authorized under the terms of the present act. All actions lawfully taken under prior acts or ordinances are hereby validated and continued in effect until amended or repealed by action taken under the authority of this act.

History: En. Sec. 2, Ch. 246, L. 1957.

11-3803. Definitions. As used in this act:

1. "City" includes incorporated cities and towns.
2. "City council" means the chief legislative body of a city or incorporated town.
3. "Planning board" means a city planning board or a joint city-county planning board.
4. "Master plan" mean a complete master plan or any of its parts such as master plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and other related matters, and including such ordinances, laws, or resolutions as may be deemed necessary to implement such complete master plan or parts thereof by legislative approval and provision for such regulations as are deemed necessary and their enforcement.
5. "Public place" means any tract owned by the state or its subdivisions.
6. "Mayor" means mayor of a city.
7. "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.
8. "Units of government" means any federal, state, regional, county, city, or town.
9. "Utility" means any facility used in rendering service which the public has a right to demand.

10. "Person" means individual, firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

History: En. Sec. 3, Ch. 246, L. 1957.

11-3804. City planning board. A city planning board shall consist of not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, two (2) of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act and two (2) of whom shall be resident freeholders within the city limits. Such citizen members shall hold no other office in the city government.

History: En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959.

Amendment

The 1959 amendment, in subd. d., substituted the words "of whom shall be resident freeholders within the urban area" for "members of which shall be residents of the urban area"; added the clause pertaining to resident freeholders within the city; and added the final sentence.

11-3805. Intention of city to create planning board—county to decide whether to create city-county board or permit city board. Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing, the county commissioners of the county in which the city is located of their intention to form a city planning board.

The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within thirty (30) days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect the planning board so to be formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957

11-3806. Member of council to serve on city planning board—term—vacancies. As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed, unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957.

11-3807. Appointments—certification. The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: En. Sec. 7, Ch. 246, L. 1957.

11-3808. Citizen members—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act.

History: En. Sec. 8, Ch. 246, L. 1957.

11-3809. Repealed.

Repeal

This section (Sec. 9, Ch. 246, L. 1957), relating to the terms of citizen members of the board, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3810. City-county planning boards—members—term of officer members. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Three (3) citizen members to be appointed by the board of county commissioners.

The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be four (4) years, except for the term of the first members appointed which will be fixed by agreement and rule of the governing bodies represented on the board for any period of time from one (1) to four (4) years in order to provide for terms with a minimum number of terms expiring in any single year.

History: En. Sec. 10, Ch. 246, L. 1957.

11-3811. Vacancies. Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957.

11-3812. Citizen members of city-county board—qualifications. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959.

Compiler's Note

The beginning of the amending section correctly identified this section as the one to be amended, however, in setting out the section as amended there was an obvious clerical error as it was set out as "11-3182." The reference should have read "11-3812."

Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

11-3813. Terms of members—removal of citizen appointee. Terms of the members who are the officers of any governmental unit represented on the board shall be coextensive wtih their respective terms of office to which they have been elected or appointed. The terms of the other members shall be four (4) years, except for the term of the first members appointed, which may be fixed by agreement and rule of the board for any period of time from one (1) to four (4) years in order to provide for staggered terms with a minimum number of terms expiring in any single year.

Provided however, any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: En. Sec. 13, Ch. 246, L. 1957.

11-3814. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within forty-five (45) days designate a representative of the county, which representative may be a member of the board of county commissioners or an office holder or employee of the county, to the mayor of the city for appointment of the city planning board; in the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: En. Sec. 14, Ch. 246, L. 1957.

11-3815. Representation of additional cities, towns, or county on existing boards. Any city, county, or town, or any combination thereof wishing to be represented upon an existing planning board, may by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

The membership of any board may be increased to provide for representation of any additional cities, counties, or towns seeking representation thereon.

History: En. Sec. 15, Ch. 246, L. 1957.

11-3816. Meetings. The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

History: En. Sec. 16, Ch. 246, L. 1957.

11-3817. Special meetings. Special meetings of the planning board may be called by the president or by two (2) members upon written request to the secretary. The secretary shall send to all members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting, or if all members are present at the special meeting.

History: En. Sec. 17, Ch. 246, L. 1957.

11-3818. Quorum—official action. A majority of members shall constitute a quorum; no action of the planning board is official, however,

unless authorized by a majority of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957.

11-3819. Members not to receive salary. The members of the planning board shall receive no salary for services on the planning board.

History: En. Sec. 19, Ch. 246, L. 1957.

11-3820. Expenses while attending conferences in another city, county, or state. When the planning board determines that it is necessary for members or employees to attend, in another city, county, or state, a regional or national conference or interview dealing with planning or related problems, the commission may pay the actual expenses of the attending members or employee provided the amount has been made available in the board's appropriation.

History: En. Sec. 20, Ch. 246, L. 1957.

11-3821. President and vice-president. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957.

11-3822. Secretary—contracts for servics. The board may appoint and prescribe the duties and fix the compensation of a secretary, and such employees as are necessary for the discharge of the duties and responsibilities of the board.

The board may make contracts for special or temporary services and any professional services.

History: En. Sec. 22, Ch. 246, L. 1957.

11-3823. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957.

11-3824. Powers and duties. To effectuate the purpose of this act, the board shall have the power and duty to:

1. Exercise general supervision of and make regulations for the administration of the affairs of the board.
2. Prescribe uniform rules pertaining to investigations and hearings.
3. Supervise the fiscal affairs and responsibilities of the board.
4. Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board, and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.
5. Keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the board.
6. Make recommendations and an annual report to the mayor and city council and the board of county commissioners of any governmental units represented on the board concerning the operation of the board and the status of planning within its jurisdiction.
7. Prepare, publish, and distribute reports, ordinances and other material relating to the activities authorized under this act.

8. Adopt a seal, and certify to all official acts.

9. Sue and be sued collectively by its legal name, styled according to the city "..... City Planning Board" or "..... City-County Planning Board," service of process being had on the president of the commission; but no costs shall be taxed against the commission or any of its members in any action.

10. Invoke any legal, equitable, or special remedy for the enforcement of the provisions of the act or ordinance or its action taken thereunder.

11. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county government and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

12. If deemed advisable, establish an advisory committee or committees.

History: En. Sec. 24, Ch. 246, L. 1957.

11-3825. Funds for operation—tax levy authority. After a city council has by ordinance or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and shall budget and appropriate the funds necessary for the respective shares thus agreed upon.

The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed one-half mill for planning board purposes.

When a city-county planning board has been established, the board of county commissioners may create a planning and zoning district which shall include only that property within the limits of a master plan or proposed master plan as defined in section 30 [11-3830], located outside the limits of incorporated cities and towns, and the board of county commissioners may levy on all of the property located within such planning district a tax not exceeding one-half mill for planning board purposes.

History: En. Sec. 25, Ch. 246, L. 1957.

11-3826. Authority to expend money. The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this act.

History: En. Sec. 26, Ch. 246, L. 1957.

11-3827. Power to accept gifts and donations—special nonreverting fund. A city or county may accept gifts and donations for planning board purposes. Any moneys so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board. Upon approval of the governing bodies represented on the board, a planning board may accept,

receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities of state or local government, or from civic sources and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957.

11-3828. Master plan—policies. So as to assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development, the planning board shall prepare a master plan. Upon the creation of a planning board under the terms of this act and before such time as a master plan has been adopted, as provided in this act, a planning board so created shall serve in an advisory capacity to the local governing bodies establishing a planning board and shall consider and make recommendations to the city or cities or county on all subdivision and convenience plats presented to the city council or board of county commissioners prior to the subdivision or convenience plat receiving final approval for filing by the proper local governmental authority. The city or county shall not be bound by the recommendation but shall give consideration to the recommendations so made. It may also formulate policies for:

1. The development of public ways, public places, public structures, and public and private utilities.
2. The issuance of improvement location permits on platted and unplatted lands.
3. The laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957.

11-3829. Departments and officials to supply information and documents requested in connection with preparation of master plan. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or upon the request of the board shall provide such information as relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957.

11-3830. Master plan—limits. The planning board shall prepare and adopt a master plan for the development of the city wherein it was created and such contiguous unincorporated area outside the city as, in the judgment of the planning board, bears reasonable relation to the development of the city. Before exercising any authority or jurisdiction over such unincorporated area, the planning board, after approval by the board of county commissioners, shall file in the office of the clerk and recorder a map or plat showing the boundaries of such unincorporated area. With the approval of the board of county commissioners, such boundaries may be revised from time to time by the planning board. Such revised boundaries shall be shown upon a map or plat which shall be filed as above provided. The area included in such map or plat shall constitute the area over which the planning board shall have jurisdiction.

In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a

map or plat showing the boundary lines so agreed upon and approved shall be filed as a part of any master plan or plans, and thereafter shall fix the limit of territorial jurisdiction with respect to decisions, orders or other actions to be made or taken by the respective planning boards or the governing bodies of cities or counties involved under the authority of this act; provided, however, that in the case of counties not exceeding twenty thousand (20,000) in population, the jurisdictional limts of the city-county planning board shall not extend more than six (6) miles from the limits of any class of city or town, incorporated or unincorporated, within such county, and in counties exceeding twenty thousand (20,000) population said limits shall not extend beyond twelve (12) miles from the limits of any city or town, incorporated or unincorporated, within such county.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959.

Amendment

The 1959 amendment made numerous changes in this section. For section prior to amendment see parent volume.

11-3831. Master plan—contents. A master plan may include:

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.
2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:
a. History, population, and physical site conditions;
b. Land use, including the height, area, bulk, location and use of private and public structures and premises;
c. Population densities;
d. Community centers and neighborhood units;
e. Blighted and slum areas;
f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;
g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;
h. Flood control and prevention;
i. Public and private utilities, including water, light, heat, communication, and other services;
j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;
k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;
l. Parks and recreation, including parks, playgrounds, reservations, forests, wild life refuges, and other public grounds, spaces, and facilities of a recreational nature;
m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;
n. Education, including location and extent of schools, colleges, and universities;
o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;
p. Conservation of water, soil, agricultural, and mineral resources;
q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 1 [11-3801] of this act.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

History: En. Sec. 31, Ch. 246, L. 1957.

11-3832. Streets and highways—amended or additional plans. After the board has adopted a master plan which includes a major street or highway plan, the board may:

1. Determine lines for new, extended, widened, or narrowed streets or highways in any portion of the city or county within the jurisdiction of the planning board.

2. Certify to the city council or board of county commissioners the amended or additional plan under the same procedure as established for the certification and approval of the original plan.

The making or certification of the amended or additional plan shall not constitute the opening, establishment, or acceptance of land for street or highway purposes.

History: En. Sec. 32, Ch. 246, L. 1957.

11-3833. Notice of hearing prior to adoption of master plan. Prior to the adoption of a master plan, the board shall give notice and hold a public hearing on the plan and a proposed ordinance for its enforcement.

At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the area over which the board has jurisdiction a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957.

11-3834. Resolution adopting master plan and recommending ordinance. After a public hearing has been held, the board may by resolution adopt the master plan and recommend the ordinance, and resolution if a county is represented, to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957.

11-3835. Certifying and presenting plan and ordinance to the governing bodies of governmental units. Upon adoption of the master plan by the planning board and the recommendation of the ordinance and resolution, if any, the secretary shall certify a copy of the plan to the governing bodies of the governmental units represented on the board.

At the first meeting of the governing bodies of the governmental units represented on the board after adoption of the plan the secretary or a member of the board shall present the plan and ordinance to the said governing bodies.

History: En. Sec. 35, Ch. 246, L. 1957.

11-3836. Approval or disapproval of plan or ordinance by governmental unit. Within sixty (60) days after certification of the plan, ordi-

nance, and resolution, if any, to the governing bodies, they shall approve or disapprove such plans, ordinances, and resolutions, and if approved, such plans shall be in full force and effect from and after the date of approval.

History: En. Sec. 36, Ch. 246, L. 1957.

11-3837. Rejection or amendment by governmental unit. If a city council or board of county commissioners represented on the board rejects the plan and ordinance or amends it, then it shall be returned to the board for its consideration with a written statement of the reasons for its rejection or amendment. When a board has more than one (1) city represented, the right of each city to amend or reject the plan shall be confined to the portion of the plan covering its territorial jurisdiction as defined in section 30 [11-3830] of this act.

The board shall have forty-five (45) days in which to consider the rejection or amendment and report to the governing bodies.

In case the board does not file a report with the objecting or amending governing body within forty-five (45) days, the action in amending or rejecting the ordinance shall become final.

History: En. Sec. 37, Ch. 246, L. 1957.

11-3838. Adoption of plan in whole or in part. The planning board may adopt the master plan as a whole by a single resolution, or may by successive resolutions adopt successive parts of the plan, said parts corresponding to major geographical sections of the plan area or to functional divisions of the subject-matter of the plan. Upon the approval of any segment of the master plan by the governing bodies of the governmental units represented on the board, that segment shall be in force.

History: En. Sec. 38, Ch. 246, L. 1957.

11-3839. Amendments of plan after adoption. After the adoption of a master plan and ordinance, all amendments to it shall be adopted according to the procedure set forth in sections 33 through 37 [11-3833 through 11-3837], except that, if the governing body or bodies desire an amendment the planning board may be directed to prepare an amendment and submit it to said governing body or bodies within sixty (60) days after formal written request.

History: En. Sec. 39, Ch. 246, L. 1957.

11-3840. Public ways, places, buildings, structures, or utilities—water and sewer facilities—policy and pattern of development. After adoption of the master plan and ordinance the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities.

History: En. Sec. 40, Ch. 246, L. 1957.

11-3841. Repealed.

Repeal

This section (Sec. 41, Ch. 246, L. 1957), relating to the control over plats, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3842. Plats of subdivisions--approval by planning board. After a master plan and an ordinance, containing provisions for subdivision control and the approval of plats and re-plats, have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, a plat of a subdivision shall not be filed with the county clerk and recorder or the city or town clerk unless compliance with the master plan has first been approved and endorsed upon the plat by the planning board having jurisdiction over the area.

Nothing herein contained shall be interpreted to usurp the present powers of the city or county governments, but shall add an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959.

Amendment

The 1959 amendment substituted, at the end of the first paragraph, "compliance with the master plan has first been approved and endorsed upon the plat by the planning board having jurisdiction over the area" for "it has first been approved by the planning board having jurisdiction over the area as provided in section 11-3841 and section 11-3844"; and added the second paragraph.

11-3843. Application for approval of plat. A person desiring the approval of a plat shall submit a written aplication for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

Upon receipt of the application, the board, if it tentatively approves the application, shall set a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.

History: En. Sec. 43, Ch. 246, L. 1957.

11-3844. Determination of whether application for approval should be granted. In determining whether an application for approval shall be granted, the board shall determine if the plat provides for:

1. Coordination of subdivision streets with existing and planned streets or highways.

2. Coordination with an extension of facilities included in the master plan.

3. Establishment of minimum width, depth, and area of lots within the projected subdivision.

4. Fair allocations of areas for streets, parks, and utilities.

History: En. Sec. 44, Ch. 246, L. 1957.

11-3845. Regulations governing procedure for application or approval of plats. The planning board shall adopt and publish written regulations governing the procedure for application or approval of plats of the lands within its jurisdiction.

History: En. Sec. 45, Ch. 246, L. 1957.

11-3846. Approval or disapproval of application of plat. After hearing and within forty-five (45) days after application for approval of the plat, the board shall approve or disapprove it. If the board approves, it shall affix the commission's seal upon the plat. If it disapproves, it shall set forth its reasons in its own records and provide the applicant with a copy.

History: En. Sec. 46, Ch. 246, L. 1957.

11-3847. Fees. The board may establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his application.

History: En. Sec. 47, Ch. 246, L. 1957.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by board. After a master plan and an ordinance containing provisions for subdivision control and the approval of plats and re-plats have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, the filing and recording of a plat involving lands covered by such master plan and ordinance shall be without legal effect unless approved by the board.

History: En. Sec. 48, Ch. 246, L. 1957.

11-3849. Repealed.

Repeal

This section (Sec. 49, Ch. 246, L. 1957), relating to the requirement of structures conforming to the master plan and ordinance, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3850. Repealed.

Repeal

This section (Sec. 50, Ch. 246, L. 1957), relating to the issuance of improvement location permits, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3851. Appeals. A decision of the board may be appealed as in other civil cases.

A petition on appeal shall specify the grounds upon which the petition alleges the illegality of the board's action. Such petition must be filed in the district court of the county in which the land is located within thirty (30) days after the date of such decision.

History: En. Sec. 51, Ch. 246, L. 1957.

11-3852. City and county powers regarding building and zoning regulations. As an integral part of the planning of areas so that the object of this legislation as set out in section 11-3801 may be further accomplished, any city council or board of county commissioners that is represented on a planning board created under the authority of this act may exercise all of the powers granted to said city council or board of county commissioners, respectively, by sections 11-2701 through 11-2710 over all lands within the territorial jurisdcition of the planning board, as such jurisdiction is set forth in section 11-3830.

History: En. Sec. 52, Ch. 246, L. 1957; amd. Sec. 5, Ch. 271, L. 1959.

Amendment

The 1959 amendment inserted the words "or board of county commissioners" the first time they appear and, in the latter part of the section, substituted "granted to said city council or board of county commissioners, respectively, by sections 11-2701 through 11-2710 over all lands within the territorial jurisdiction of the planning board" for "heretofore granted by sections 11-2701 through 11-2709 over all lands within its territorial jurisdiction."

11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources. Nothing in this act shall be deemed to authorize an ordinance, resolution, rule, or regulation which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959.

Amendment

The 1959 amendment substituted the word "resolution" for "law" and substituted the last part of the section, beginning with "development," for "development, recovery, and sale of any mineral resources or forests by the owner thereof, or the construction of buildings, railroads, or other structures or equipment necessary to the full use, development, recovery, and sale of mineral or forest resources."

11-3854. Exercise of zoning commission powers and duties. Where a city council and/or board of county commissioners is represented on an existing planning board, the duties and powers of the "zoning commission" provided for in section 11-2706, Revised Codes of Montana, 1947, shall be performed by the planning board of which such city and/or board of county commissioners is a member.

History: En. Sec. 54, Ch. 246, L. 1957; amd. Sec. 7, Ch. 271, L. 1959.

Amendment

The 1959 amendment inserted "and/or board of county commissioners" in two places.

Repealing Clause

Section 8 of Ch. 271, Laws 1959 read "That sections 11-3809, 11-3841, 11-3849 and 11-3850, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

11-3855. Validation of prior zoning ordinances, rules and regulations. All zoning ordinances and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect, until amended or repealed by action of the city council of such city taken under the authority of this act. These ordinances shall have the same effect as though previously adopted as a master plan of land use or parts thereof.

History: En. Sec. 55, Ch. 246, L. 1957.

11-3856. Enforcement of act. The governing bodies of any governmental unit or units represented upon a planning board may provide by ordinance or resolution for the enforcement of this act and of any regulation or ordinance made thereunder, and may provide punishment for violation thereof. It is also empowered to provide civil penalties for such violation.

History: En. Sec. 56, Ch. 246, L. 1957.

11-3857. Restraining and mandatory injunctions. The planning board or any designated enforcement officials may institute a suit for injunction in the district court of the county to restrain an individual or a governmental unit from violating the provisions of this act or of an ordinance enacted pursuant to its terms. The planning board or any designated enforcement officials may also institute a suit for a mandatory injunction directing an individual or a governmental unit to remove a structure erected in violation of the provisions of this act or of an ordinance enacted pursuant to its terms. If the planning board or other enforcement official is successful in its suit, the respondent shall bear the costs of the action. No member of a planning board created under the terms of this act shall be liable in damages for performing the duties of a member of the planning board as outlined in this act.

History: En. Sec. 57, Ch. 246, L. 1957.

11-3858. Provisions of county planning and zoning act no longer applicable where master plan adopted. When and if said master plan and zoning provisions created by this act have been finally adopted the provisions of sections 16-4101, 16-4102, 16-4103, 16-4104, 16-4105 and 16-4106, Revised Codes of Montana, 1947, shall be no longer applicable to the area covered by the plan and no further development districts shall be thereafter created within said area and all other acts or parts of acts inconsistent with the provisions of this act are, to the extent of their inconsistency, repealed.

History: En. Sec. 58, Ch. 246, L. 1957.

Separability Clause

Section 59 of Ch. 246, Laws 1957 read: "The provisions of this act are considered severable, and if any provision is found to be unconstitutional, it is the intention of the legislative assembly that the remainder have full force and effect."

Platting Procedure and Subdivision Control

(Sections 11-601 through 11-616, R.C.M., 1947)

CHAPTER 6

PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section 11-601. Plats and surveys to be made and recorded.
11-602. What plat must contain.
11-603. Survey—by whom to be made and what to contain.
11-604. Further requirements as to survey.
11-605. Certificate of surveyor.
11-606. Certificate of dedication and form.
11-607. Abstract of title—release of mortgage or other lien—inclusion of release and judgment in abstract—provision for consent in lieu of release of mortgages or other liens.
11-608. Plat to be prepared in duplicate—approval of same by municipal council or county commissioners—filing and recording.
11-609. Plats must be made on mounted drawing paper, filed and recorded.
11-610. No lots to be sold until plat recorded—penalty.
11-611. Donations or grants on a plat has the effect of a deed.
11-612. New survey and plat may be ordered.
11-613. Form of plat may be prescribed by ordinance.
11-614. Small and irregularly shaped tracts must be platted, surveyed and certified before sale.
11-615. Penalty for violation of law.
11-616. Vacation of recorded plat.

11-601. (4980) **Plats and surveys to be made and recorded.** Any person, company, or corporation, who may lay out any city or town, or any addition to any city or town, or any tract of land within the limits of any city or town, or townsite, or transfer any lots, blocks, or tracts therein, must cause to be made an accurate survey and plat thereof, and cause the same to be recorded in the office of the county clerk and recorder of the county in which such land lies.

History: En. Sec. 5000, Pol C. 1895; re-en. Sec. 3465, Rev. C. 1907; amd. Sec. 1, Ch. 119, L. 1917; re-en Sec. 1, Ch. 64, L. 1933.

References

Cited or applied as section 5000, political code, before amendment, in Farlin v. Hill, 27 M 27, 33, 69 P 237; as section 3465, revised codes, in De Sandro v. Missoula Light & Water Co., 48 M 226, 234, 136 P 711.

43 C.J. Municipal Corporations § 133 et seq.

11-602. (4981) **What plat must contain.** The plat must show as follows:

1. All streets, alleys, avenues, and highways, and the width thereof.
2. All parks, squares, and all other grounds dedicated or reserved for public uses, with the boundaries and dimensions thereof.
3. All lots and blocks with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot and block.
4. The angles of intersection of all boundary lines of the lots and blocks wherever the angle of intersection is not a right angle.
5. The location of all stone or iron monuments set to establish street lines.
6. The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.
7. The location of all section corners or legal subdivision corners of sections within the limits of said plat.
8. The adjoining block corners of all surveyed and adjoining additions, and the streets, alleys, avenues, and highways of such adjoining additions, for the purpose of showing how the new plat and survey conform to such adjoining addition of surveyed and platted ground.
9. For the purpose of promoting the public comfort, welfare, and safety, such plat and survey must show that at least one-ninth of the

platted area, exclusive of streets, alleys, avenues, and highways, is forever dedicated to the public for parks and playgrounds; the one-half of such area so dedicated to the public for parks and playgrounds may be distributed in small plots of not less than one block in area through the different parts of the area platted; and the one-half shall be consecrated into larger parks on the outer edge of the area so platted. The board of county commissioners of the county, or the council of the city or town, is hereby authorized to suggest suitable places for such parks and playgrounds, and for good cause shown may make an order in the proceedings of such body (to be indorsed and certified on said plat), diminishing the amount of such area herein required to be dedicated as public parks and playgrounds to not less than one-twelfth thereof, exclusive of streets, alleys, avenues, and highways; provided, that where such platted area consists of a tract of land containing less than twenty acres, such board of county commissioners of the county, or the council of the city or town, may make an order in the proceedings of such body, to be endorsed and certified on said plat, that no park or playground be set aside or dedicated.

History: Ap. p. Sec. 1, p. 39, L. 1883; re-en. Sec. 2031, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 226, L. 1889; amd. Sec. 5001, Pol. C. 1895; re-en. Sec. 3465, Rev. C. 1907; amd. Sec. 2, Ch. 119, L. 1917; re-en. Sec. 4981, R. C. M. 1921.

References

Cited or applied as section 5001, political code, before amendment, in Farlin v. Hill, 27 M 27, 33, 69 P 237; as section 3466, revised codes, before amendment, in Barnard Realty Co. v. City of Butte, 48 M 102, 113, 136 P 1064; State ex rel. Cotter v. District Court, 49 M 146, 152, 140 P 732.

11-603. (4982) **Survey—by whom to be made and what to contain.** A survey of the city or town site or addition must be made by the county surveyor, or some other competent surveyor, who must mark all the corners of the blocks and lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be six inches by six inches, and be placed in the ground to the depth of one foot.

History: En. Sec. 5002, Pol. C, 1895; re-en. Sec. 3467, Rev. C. 1907; re-en. Sec. 4982, R.C.M. 1921.

11-604. (4983) **Further requirements as to survey.** If a stone is used as a monument it must have a cross-cut in the top at the point of intersection of the street lines, or a hole may be drilled in the stone to mark such point. If an iron monument is used, it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and establish permanently the lines of all the streets.

History: En. Sec. 5003, Pol. C. 1895; re-en. Sec. 3468, Rev. C. 1907; re-en. Sec. 4983, R. C. M. 1921.

11-605. (4984) **Certificate of surveyor.** The surveyor must make and subscribe in the plat a certificate that such survey was made according to the provisions of this chapter, stating the date of survey, and verify the same by his oath.

History: En. Sec. 5004, Pol. C. 1895; re-en. Sec. 3469, Rev. C. 1907; re-en. Sec. 4984, R. C. M. 1921.

References

Cited or applied as section 5004, political code, in Farlin v. Hill, 27 M 27, 33, 69 P 237.

11-606. (4985) **Certificate of dedication and form.** The owner of the land so platted, or his duly authorized attorney, must make on such plat a certificate, to be known as "The certificate of dedication," which may be in the following form:....., do hereby certify that..... have caused to be surveyed, subdivided, and platted into lots, blocks, streets, and alleys, as shown by the plat and certificate of survey hereunto annexed, the following described tract of land, to-wit: (Here describe land included in plat), to be known and designated (here give full name of city, town, or addition), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat, are hereby granted and donated to the use of the public forever. Dated this..... ....., day of....., A. D. 19.....; which must be signed by all the owners and acknowledged in the same manner as a deed.

History: En. Sec. 5005, Pol. C. 1895; re-en. Sec. 3470, Rev. C. 1907; re-en. Sec. 4985, R.C.M. 1921.

Construction of Grant of Irregular Strip Bordering Meandering River

In an action by a county to quiet title to a small strip of land bordering on a river and which was allegedly included in an addition to a town and marked "Riverside Avenue" on the map filed describing the land dedicated for street and alley purposes, which river formed one boundary of the entire platted ground, and by its meandering caused the strip to be wider than other streets, and in places wider than in others, held, that the dedication included the entire strip in dispute, contrary to the contention that the land between a 15 foot strip and the river was not included in the dedication. Mineral County v. Hyde, 111 M 535, 537, 111 P 2d 284.

Plat with Certificate Has Force and Effect of Deed

The plat required to be filed in the office of the county recorder by the person laying out an addition to a town, and which, under this section must contain a certificate of dedication of streets, alleys, etc., for public use, has, when accepted and filed, the force and effect of a deed and should be interpreted in favor of the grantee. (sec. 67-1518) Mineral County v. Hyde, 111 M 535, 537, 111 P 2d 284.

Operation and Effect

The fee to the land covered by a street once established is vested in the public; for the form of dedication required of the owner, when the plat of the city or town or an addition thereto is recorded, is equivalent to a deed. Hershfield v. Rocky Mt. Bell Tel. Co., 12 M 102, 115, 29 P 883; Kipp v. Davis-Daly Copper Co., 41 M 509, 516, 110 P 237.

Common Law Dedication

The filing of city plat before enactment of statutes governing dedication of privately owned lands to the public and providing for the certificate of dedication, constituted a "common law dedication" of the streets shown thereon, so that the city acquired only easements in such streets. City of Billings v. Pierce Packing Co., 117 M 255, 262, 161 P 2d 636.

References

Cited or applied as section 5005, political code, in Farlin v. Hill, 27 M 27, 34, 69 P 237; Butte Electric Ry. Co. v. Brett, 80 M 12, 16, 257 P 478.

11-607. (4986) **Abstract of title—release of mortgage or other lien—inclusion of release and judgment in abstract—provision for consent in lieu of release of mortgages or other liens.** (1) The owner of the land so surveyed and platted must have prepared and file with said plat an abstract of the title of the land; such abstract of title must be prepared and certified to by an abstractor who has been duly qualified to engage in the business of compiling abstracts of titles to real estate in the state of Montana; such abstract of title must be submitted to the county attorney of the county when said platted land is outside of any city or town, or to the city or town attorney if said platted land is within the boundaries of any city or town, to examine and indorse on said abstract of title his examination of the same, and that the person making the certificate of dedication is the owner in fee simple of said land so platted.

(2) Persons holding any mortgage or other claim or lien against said land must sign, acknowledge, and record a release in full of any and all claims against the same, which must be shown in the abstract of title as filed; and if the county attorney or city attorney refuses to certify to said title as herein provided, it shall be the duty of the person claiming to own said land in fee simple to begin suit to quiet title and prosecute the same to final judgment. After final judgment is had, he shall include a certified copy of such judgment in said abstract of title, preceding the certificate of said abstractor, and it shall be followed by the certificate of

said county or city attorney, as the case may be, and such abstract of title shall, together with the plat, be filed with the proper officer; provided, however, that the owners in fee simple of any lot or lots or tract of land may plat the same as provided by law without securing the release of mortgages, claims, or liens against the same if the persons, firms or corporations holding mortgages or other claims or liens of record consent to the platting of such land by filing with such plat a written consent duly acknowledged. In the platting of such tracts or lots, the lots or tracts as platted shall coincide in area with the description on the recorded deed of each owner at the time of platting so that the description in any mortgage, lien or claim of record can be identified on the plat, and the plat shall contain a metes and bounds description corresponding to the number or other designation of each lot on the plat so that it is apparent from the plat that the lot number or other designation describes the same property.

(3) In the filing and approval of such plats, it shall not be necessary to furnish or deposit a complete abstract of title for examination, but before filing such plats, the same shall be submitted to the county attorney of the county when said platted land is outside of any city or town, or to the city or town attorney if said platted land is within the boundaries of any city or town, together with a certificate from a licensed abstractor showing the names of the owners of said tracts or lots together with an exact description of their property as shown by the deeds of record to said owners and showing the names of any mortgages or other lienholders or claimants of record against said property so that it may be determined that the owners and the persons holding mortgages or other claims or liens have consented to the filing of said plat as herein provided.

(4) If it is determined that the owners have joined in the plat and that all mortgagees, lienholders or claimants have consented as herein required and that the plat identifies the property of each owner as herein required, then the plat may be filed in the same manner as other plats and in accordance with the provisions of this chapter.

History: En. Sec. 5006, Pol C. 1895; re-en. Sec. 3471, Rev. C. 1907; amd. Sec. 3, Ch. 119, L. 1917; re-en. Sec. 4986, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1943.

11-608. (4987) **Plat to be prepared in duplicate—approval of same by municipal council or county commissioners—filing and recording.** (1) All such plats must be prepared in duplicate, and when the land platted is within the boundaries of an incorporated city or town, such plats must be submitted to the city or town council for examination and approval or rejection, and when found to conform to law to be approved in duplicate by the council and the city or town engineer, and a certificate of approval shall be indorsed thereon signed by the mayor and the clerk; and a certificate of the city or town engineer shall be indorsed thereon showing that the plat conforms to the adjoining additions or plats of the city or town already platted, as near as the circumstances will admit; and one of such plats so approved and certified shall be filed with the city or town clerk, and one shall be filed with the county clerk and recorder of the county, which shall be the official plat and survey.

(2) When the land platted is outside of the boundaries of a city or town, such plat must be prepared in duplicate and submitted to the board of county commissioners of the county for its examination and approval or rejection, and when found to conform to law to be approved in dupli-

cate by such board of county commissioners and by the county surveyor, and a certificate of approval shall be signed by the chairman of such board and by the county clerk and by the county surveyor, and both plats shall be filed and recorded with the county clerk and recorder. When such town site is duly included within the boundaries of an incorporated city or town, upon application of such city or town council to such board of county commissioners showing such incorporation, such board shall by an order direct that one of such plats so approved, certified, and filed shall be delivered to the mayor and the city clerk, which shall be filed and become the official plat and survey of such city or town.

History: En. Sec. 5007, Pol. C. 1895; re-en. Sec. 3472, Rev. C. 1907; amd. Sec. 4, Ch. 119, L. 1917; re-en. Sec. 4987, R. C. M. 1921.

11-609. (4988) **Plats must be made on mounted drawing paper, filed and recorded.** All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county clerk, and he must keep the original plat for inspection.

History: En. Sec. 5008, Pol. C. 1895; re-en. Sec. 3473, Rev. C. 1907; re-en. Sec. 4988, R.C.M. 1921.

11-610. (4989) **No lots to be sold until plat recorded—penalty.** Such plat must be recorded before any lots or blocks are sold or transferred in any manner, and the owner thereof, or any part of the same, must forfeit or pay for each lot sold or transferred, before the recording of such plat, a penalty not less than ten nor more than one hundred dollars, which must be recovered by the county attorney for the use of the county.

History: En. Sec. 5009, Pol. C. 1895; re-en. Sec. 3474. Rev. C. 1907; re-en. Sec. 4989, R.C.M. 1921.

11-611. (4990) **Donations or grants on a plat has the effect of a deed.** Every donation or grant to the public, or to any person, society, or corporation, marked or noted as such on the plat of the city or town, or addition, must be considered, to all intents and purposes, as a deed to the said donee.

History: En. Sec. 5010, Pol. C. 1895; re-en. Sec. 3475, Rev. C. 1907; re-en. Sec. 4990, R.C.M. 1921.

11-612. (4991) **New survey and plat may be ordered.** Whenever the recorded plat of any city or town or addition thereto, does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or town or addition, the council is authorized to cause a new and correct survey and plat of such city or town or addition to be made and recorded in the office of the county clerk, which corrected plat must follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the surveyor making the same must be indorsed thereon, referring to the original plat corrected thereby, and the defect existing therein, and corrected by such new survey and plat. The ordinance authorizing the making of such new plat must be recorded in the office of the county clerk. The surveyor's certificate must show where said ordinance is recorded.

History: En. Sec. 5011, Pol. C. 1895; re-en. Sec. 3476, Rev. C. 1907; re-en. Sec. 4991, R.C.M. 1921.

11-613. (4992) **Form of plat may be prescribed by ordinance.** The council of any city or town has power by ordinance to prescribe the manner and form of making any survey of any plat of lands within the city or town.

History: En. Sec. 5012, Pol. C. 1895; re-en. Sec. 3477, Rev. C. 1907; re-en. Sec. 4992, R. C. M. 1921.

11-614. (4993) **Small and irregularly shaped tracts must be platted, surveyed and certified before sale.** Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, surburban tracts, or community tracts, containing less than the United States legal subdivision of ten (10) acres, or who shall subdivide and/or sell or transfer any irregularly shaped tract of land, the acreage of which cannot be determined without a survey, must cause the same to be surveyed, platted, certified, and filed in the office of the county clerk and recorder of the county in which said land lies, according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks and playgrounds, and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat; provided further that until the filing of such plat, or survey, the county clerk of any county shall not record any deed which conveyed, or purports to convey, any irregular shaped tract or part of land or parcel of any such platted tract or tracts of less than the United States legal subdivision of ten (10) acres, unless the person presenting such deed for record also delivers to such county clerk for filing a plat or map which has been prepared by a surveyor or civil engineer, which plat or map shall show with particularity the legal description, and area of the land to be conveyed, except that no map or plat shall be required in those cases where the parcel of land being conveyed has been previously conveyed by deed or other instrument recorded ten (10) years or more prior to the passage of this act.

History: En. Sec. 5013, Pol. C. 1895; re-en. Sec. 3478, Rev. C. 1907; amd. Sec. 5, Ch. 119, L. 1917; re-en. Sec. 4993, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1939; amd. Sec. 1, Ch. 180, L. 1945; amd. Sec. 1, Ch. 227, L. 1947.

11-615. (4994) **Penalty for violation of law.** Any person who shall violate any of the provisions of this chapter is guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than three hundred dollars.

History: En. Sec. 6, Ch. 119, L. 1917; amd. Sec. 1, Ch. 48, L. 1921; re-en. Sec. 4994, R.C.M. 1921.

11-616. Vacation of recorded plat. Any plat prepared and recorded as herein provided may be vacated, either in whole or in part, as provided by section 11-2803 and upon such vacation the title to the streets and alleys of such vacated portions, to the center thereof, shall revert to the owners of the property adjacent to such vacated portions.

History: En. Sec. 1, Ch. 200, L. 1947.

Zoning and Building Regulations

(Sections 11-2701 through 11-2710, R.C.M., 1947)

CHAPTER 27

BUILDING REGULATIONS—ZONING COMMISSION

Section 11-2701. Building restrictions by cities and towns authorized.
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11-2701. (5305.1) **Building restrictions by cities and towns authorized.** For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council, or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929.

Constitutionality

Held, that this act, authorizing the creation of zoning ordinances in cities and towns and the appointment of a board of adjustment, as well as such an ordinance involved in the case at bar, are free from constitutional objections. Freeman v. Board of Adjustment et al., 97 M 342, 347 et seq., 34 P 2d 534.

State May Delegate Police Power to Municipality

The state, in which the police power is lodged, may by act of the legislature delegate such power to a municipality for the purpose of enacting zoning ordinances, as it did in this state by enacting chapter 136, laws of 1929. Freeman v. Board of Adjustment et al., 97 M 342, 347 et seq., 34 P 2d 534.

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43 C.J. Municipal Corporations § 356 et seq.

9 Am. Jur. 199, Buildings, §§ 3 et seq.

Constitutionality of city or town planning statutes or ordinances. 12 ALR 679.

Public regulation of gasoline filling stations. 18 ALR 101.

Zoning: Creation by statute or ordinance of restricted residence districts within municipality from which business buildings are excluded. 19 ALR 1395.

Constitutionality of statute or ordinance limiting height of buildings. 34 ALR 46.

Zoning regulations with respect to garages. 40 ALR 351.

Injunction as a remedy for violation of zoning ordinance. 54 ALR 366.

What enterprise or activity is permissible in business zone. 128 ALR 1214.

Surburban zoning regulations. 131 ALR 1055.

Attack upon validity of zoning statute or ordinance as affected by provisions for variation, permit, etc. 136 ALR 1378.

Construction and application of terms "farm," "farming," or the like in zoning regulations. 146 ALR 1201.

Zoning: Changes, after adoption of zoning regulations, in respect of non-conforming existing use. 147 ALR 167.

Building restrictions, by covenant or condition in deed or by zoning regulation, as applied to religious groups. 148 ALR 367.

Zoning: Small area within limits of a zone, in which are permitted uses different from or inconsistent with those permitted in the larger area ("spot zoning"). 149 ALR 292.

Construction and application of provision of zoning ordinance which permits use for accessory or incidental purposes. 150 ALR 494.

Zoning regulations in relation to cemeteries. 151 ALR 742.

Radio equipment as within zoning ordinance or restrictive covenant. 155 ALR 1134.

Construction and application of provisions of zoning regulations respecting permissible use, where lot or parcel is divided by zone boundary lines. 159 ALR 854.

Zoning regulations as affecting airports and airport sites. 161 ALR 1232.

11-2702. (5305.2) **Districts for effecting building restrictions.** For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

History: En. Sec. 2, Ch. 136, L. 1929.

11-2703. (5305.3) **Purpose of act.** Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: En. Sec. 3, Ch. 136, L. 1929.

11-2704. (5305.4) **Method of procedure.** The city or town council, or other legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

History: En. Sec. 4, Ch. 136, L. 1929.

11-2705. (5305.5) **Changes.** Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (¾) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

History: En. Sec. 5, Ch. 136, L. 1929.

11-2706. (5305.6) **Zoning commission.** In order to avail itself of the powers conferred by this act, the city or town council or other legislative body, shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929.

43 C.J. Municipal Corporations §§ 212 et seq., 258 et seq., 373 et seq., 393 et seq.

11-2707. (5305.7) **Board of adjustment.** Such city or town council or other legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in har-

mony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of three (3) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(2) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney.

(5) The board of adjustment shall have the following powers:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(6) In exercising the above mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination ap-

pealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(7) The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(9) Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929.

Powers of Board of Adjustment Broad, General and Discretionary

Contention that the powers of the board of adjustment (or appeal) created by this act, authorizing the enactment of zoning ordinances in cities and towns, are limited to slight variations, such as the height of a building, the distance it must be from the street, etc., held not meritorious, but that on the contrary the board, and administrative body vested with general power to act as a fact-finding body and determine whether in any specific case unusual hardship might result from an enforcement of the strict letter of the ordinance, possesses broad and general powers with a considerable latitude for the exercise of the discretion, the conferring of which powers does not constitute an unlawful delegation of legislative authority. Freeman v. Board of Adjustment et al., 97 M 342, 368, 34 P 2d 534.

Id. Prior to the enactment of a city zoning ordinance a grocery store had been conducted for several years in a rented building later incorporated in a residential district under the ordinance; after its enactment the storekeeper purchased a lot in the same block and but a short distance from the location of the store and contracted for the erection of a structure thereon for store and residence purposes and asked for a building permit. The permit being refused on the ground that the location was in a residential district, he appealed to the board of adjustment appointed under the ordinance, which ordered that the permit be granted because denial of it would result in unnecessary hardship. Held, on appeal by the former landlord of petitioner from a judgment of the district court on writ of certiorari affirming the action of the board, that there was not sufficient substantial evidence to warrant a finding that the board had not abused its discretion in making the order attacked.

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43 C.J. Municipal Corporations §§ 212 et seq., 258 et seq., 373 et seq., 393 et seq.

11-2708. (5305.8) **Enforcement and remedies.** The city or town council, or other legislative body, may provide by ordinance for the enforcement of this act and of any regulation or ordinance made thereunder. A violation of this act, or of such ordinance or regulation is hereby declared to be a misdemeanor and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintaind, or any building, structure, or land is used in violation of this act, or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929.

43 C.J. Municipal Corporations §§ 356 et seq., 603 et seq.

11-2709. (5305.9) **Conflict with other laws.** Wherever the regulations made under authority of this act require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute or local ordinance or regulation shall govern.

History: En. Sec. 9, Ch. 136, L. 1929.

43 C.J. Municipal Corporations § 217 et seq.

11-2710. Exercise of powers by county commisisoners—when. Where a board of county commissioners is represented upon a city-county planning board formed under sections 11-3801 through 11-3858, Revised Codes of Montana, 1947, all the powers relating to zoning granted to cities in the preceding sections 11-2701 through 11-2709 may be assumed by the aforesaid board of county commissioners as relating to lands in the jurisdictional area and outside the corporate limits of any city or town.

History: En. 11-2710 by Sec. 1, Ch. 171, L. 1959.

Title of Act

An act providing for a section to be known as section 11-2710 and authorizing county commissioners to exercise building and zoning regulatory powers; containing a repealing clause.

Repealing Clause

Section 2 of Ch. 171, Laws 1959 repealed all acts or parts of acts in conflict therewith.

County Planning and Zoning Districts

(Sections 16-4101 through 16-4107, R.C.M., 1947)

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

Section 16-4101. Planning and zoning districts—commission—creation.
16-4102. Development pattern.

16-4103. Adoption of development district.
16-4104. Surveys and examinations—powers.
16-4105. Regulations—appeals—permits for construction.
16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas.
16-4107. "District" defined.

16-4101. Planning and zoning districts—commission—creation. Whenever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district.

History: En. Sec. 1, Ch. 154, L. 1953.

Title of Act

An act providing for the appointment of county planning commissions, prescribing the powers, duties, and financing thereof; providing for zoning, land regulations and subdivisions controls and defining the limits thereof; providing for building permits; and repealing all acts and parts of acts in conflict herewith.

20 C.J.S. Counties § 49.
Zoning regulations as to privately owned parking places. 29 ALR 2d 867.

Cross-Reference

Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4102. Development pattern. For the purpose of furthering the health, safety and general welfare of the people of the county, the county planning and zoning commission hereby is empowered, and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district. Such development pattern, with the accompanying maps, plats, charts and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and with others of which it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings, or within which the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building set backlines shall be established. No planning district or recommendations adopted under this act shall regulate lands used for grazing, horticulture, agriculture or for the growing of timber; providing that existing non-conforming uses may be continued, although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953.

Cross-Reference

Provisions of this section not appliable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4103. Adoption of development district. Adoption by the planning and zoning commission of the development district, or any change therein, may be in whole or in part, but must be by the affirmative vote of the

majority of the whole commission, provided, however, that prior to any such adoption a public hearing shall have been held not less than fifteen (15) days after notice thereof shall have been posted in at least three (3) public places within the area affected. The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district, shall refer expressly to the maps, charts and descriptive matters forming the pattern or part thereof; provided that the board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953.

Cross-Reference

Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4104. Surveys and examinations—powers. The planning and zoning commission, and any of its members, officers and employees in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon. In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this act. All public officials, departments and agencies, having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953.

Cross-Reference

Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4105. Regulations—appeals—permits for construction. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners, drafts of resolutions for the purpose of carrying out the development districts, or any part thereof, previously adopted by the commission, including zoning and land use regulations, the making of official maps and the preservation of the integrity thereof, and including procedure for appeals from decisions made under the authority of such regulations, and regulations for the conservation of the natural resources of the county, and the board of county commissioners is hereby authorized to adopt such resolutions; provided that any person aggrieved by any decision of the commission or the board of county commissioners, may, within thirty (30) days after such decision or order, appeal to the district court in the county in which the property involved, is located. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration or enlargement of any building or structure otherwise subject to the provisions of this act, and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953.

Violation of zoning ordinance and regulation as affecting or creating liability for injuries or death. 31 ALR 2d 1469.

Cross-Reference

Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4106. Effect of act upon powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the in-

corporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this act except and until the board of county commissioners having jurisdiction over such adjacent area establish a planning commission, and adopt initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953.

Standing of lot owner to challenge validity or regularity of zoning changes dealing with neighboring property. 37 ALR 2d, 1143.

Cross-Reference

Provisions of this section not applicable where master plan is adopted under secs. 11-3801 to 11-3858. See sec. 11-3858.

16-4107. "District" defined. For the purpose of this act the word "district" shall mean any area that consists of not less than forty (40) acres.

History: En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955.

Amendment

The 1955 amendment substituted the words "not less than forty (40) acres" for "one (1) square mile or more."

Separability Clause

Section 8 of Ch. 154, Laws 1953 read: "In the event that any clause or provision of this act shall be declared unconstitutional, the remaining parts of this act shall remain in full force and effect."

Repealing Clause

Section 9 of Ch. 154, Laws 1953 repealed all acts and parts of acts in conflict therewith.